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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,408

03/17/2004

Jeffrey D. Carnevali

NPI-023

3835

7590  
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09/29/2010

EXAMINER

MARSH, STEVEN M

ART UNIT

PAPER NUMBER

3632

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/802,408	<b>Applicant(s)</b> CARNEVALI, JEFFREY D.	
	<b>Examiner</b> STEVEN M. MARSH	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,22-24 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 and 22-24 is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-14,16,17 and 27 is/are rejected.
- 7) ☒ Claim(s) 7 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is the eighth office action for U.S. Application 10/802,408 for a Configurable Mounting Bracket filed by Jeffrey Carnevali on March 17, 2004. The indicated allowability of claims 5, 6, 10, and 11 is withdrawn in view of the newly discovered reference(s) to US 4,629,150 to O' Callaghan. Rejections based on the newly cited reference(s) follow.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 April 2010 has been entered.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitations "the collar" and "the wedge" in line 3. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is assumed that the claim is dependent on claim 15 which has antecedent basis for the limitations.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,629,150 to O'Callaghan. With respect to claims 1, 5, and 6, O'Callaghan discloses a mounting bracket. The mounting bracket comprises a plurality of support rods (3 and 4) each consisting of a solitary non-extensible member of single-piece construction having a substantially uniformly solid round cross-section extended substantially continuously between opposing first and second end portions. There is a means (6, 7, 20, and 21) for clamping the first end portions of the plurality of support rods in a fixed arrangement and means (the foot of each leg) for permanently securing the second end portions of the plurality of support rods relative to an external surface and resisting relative slipping of the end portions relative to an external surface. There is also a means for securing the second end portions of the support rods relative to an external surface (the ends of the rod contacting the floor).

The means for clamping the first end portions of the rods in a fixed arrangement comprises a means for clamping each of the first end portions between an external collar (2b) and an internal wedge (formed by 6 or 7). The means for clamping each of the first end portions between an internal collar and an internal wedge further comprises clamping a lengthwise portion of each of the first end portions in a lengthwise cylindrical cavity (see figures 6 and 7).

Claims 3, 4, 8-14 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Callaghan in view of U.S. Patent 6,032,910 to Richter.

O'Callaghan discloses the collar as being structure with a plurality of part cylindrical relief grooves (the cylindrical openings that receive legs 3-5) structured to accept the first end portion of one of the rods. O'Callaghan also discloses three elongated rods and the clamp mechanism as structured for clamping the first end portions in a fixed, substantially triangular arrangement. O'Callaghan does not disclose the support rods as being independently permanently bendable in three dimensions along a length of the rods, a means for securing the end portions of the support rods relative to an external surface, or a flexible sheath substantially covering each of the plurality of permanently bendable support rods. Richter discloses a mounting bracket comprising a rod (3) with a solitary nonextensible member of single-piece construction with a substantially uniformly round cross-section extended substantially continuously between opposing first and second end portions.

The rod is substantially independently permanently bendable in three dimensions along substantially an entire length between the first and second end portions to hold

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the mounting portion (9) in different configurations. There is a means (5) for permanently securing the second end portion of the support rod relative to an external surface and the securing means comprises a means for resisting slipping of the second end portion of the support rod relative to an external surface. There is also a flexible sheath (2) substantially covering each of the plurality of permanently bendable support rods (3).

Richter also discloses the shoe mechanism being structured for receiving a mechanical fastener for permanently securing the second end portion in a fixed position relative to the external surface (col. 2, lines 24-27) and the rod is formed of aluminum. Because both O'Callaghan and Richter disclose support rods for mounting brackets, it would have been obvious to one skilled in the art to use the support rod taught by Richter as the support rods for O'Callaghan to achieve the predictable result of a mounting portion that can be adjusted to different configurations. O'Callaghan in view of Richter does not disclose the specific diameter of the rods or the length of the rods, but the specific dimensions of the rods are a matter of design preference that would be obvious to one of ordinary skill in the art.

### ***Allowable Subject Matter***

Claims 18-20 and 22-24 are allowed. Claims 7 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 16 and 17 would be allowable if rewritten to overcome the rejection(s)

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under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-6, 8-14 and 27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN M. MARSH whose telephone number is (571)272-6819. The examiner can normally be reached on 8:30 am - 7:00 pm (Monday-Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell McKinnon can be reached on 571-272-4797. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. M./  
Examiner, Art Unit 3632  
September 25, 2010

/Terrell Mckinnon/  
Supervisory Patent Examiner, Art Unit 3632